or receiving notice, a practice which must have been known to the plaintiff. It was held, however, that there was a statutory presumption that the agreement was for one month and that the presumption was not displaced by the plaintiff's admission that he was engaged on a daily wage as that merely meant "that his wages were to be calculated at a daily rate."

The appeal is dismissed with costs.

Appeal dismissed.

Re HUP HING SHOE STORE
Ex parte CHANG KIM CHOON

[O. Bk. J. (Azmi J.) January 21, 1962]

[Ipoh — In Bankruptcy No. 37 of 1961]

Landlord and Tenant — Bankruptcy — Disclaimer of tenancy by Official Assignee — Bankruptcy Ordinance, 1959, s.59.

Where the Official Assignee has ceased to have any interest in premises occupied by a bankrupt and finds that the property will not produce a surplus beyond the value of the liability affecting it he may be able to disclaim it and so get rid of the property and the liability together.

It is the intention of the Bankruptcy Ordinance that the Official Assignee should not be compelled to acquire the bankrupt's property subject to such liabilities.

Cases referred to:—

(1) *Ex parte Walton* (1881) 17 Ch. D. 746, 751.

(2) *Reeves* v. *Davies* [1921] 2 K.B. 486.

The following cases are also cited in argument:

Ramasamy Pillai v. *Mayappa Chettiar* [1955] M.L.J. 105; *Meenachi Sundram* v. *Kunjan Pillai* [1955] M.L.J. 130; *Sutton* v. *Dorf* [1932] All E.R. Reprint 70; *Stafford* v. *Levy* [1946] 2 All E.R. 256.

BANKRUPTCY.

H. N. Dias for Assistant Official Assignee.

Lim Kean Chye for the landlords.

S. P. Seenivasagam for the bankrupt.

Cur. Adv. Vult.

Azmi J.: This is a motion by the Assistant Official Assignee for leave to disclaim under section 59 of the Bankruptcy Ordinance, 1959, the tenancy of premises at No. 16, Laxamana Road, Ipoh.

A receiving order was made against Hup Hing Shoe Store and adjudicating orders were made against Lee Yuen Heong (f) and Chew Khan, the partners of the said Hup Hing Shoe Store on the 4th September, 1961. The respondents are the trustees of the Estate of Lam Looking, deceased, who are the proprietors of the premises.

The said bankrupts carried on business at the said premises under the style of Hup Hing Shoe Store, and the premises are tenanted at a rental of $74 per month.

All the goods and effect of the said store were auctioned on the 26th July, 1961, and the said bankrupts ceased their business after the seizure of the property.

Chew Khan, one of the partners, had been living at the premises for several years and is still living there with his wife and the rent receipts issued by the landlords are in the name of Madam Lee Yuen Heong of Chop Hung Hing, and the bankrupts' property in the said premises have been disposed of by auction.

The Assistant Official Assignee now says that he does not require the said premises any further.

Chew Khan opposed this motion on the ground that it is against his interests and that he is the lawful surviving tenant of the premises and has a legal right to occupy them although the firm has ceased to carry on business. He said in paragraph 4 of his affidavit sworn on the 7th October, 1961, that he and Lee Yuen Heong's husband on behalf of the partnership paid an equal sum of $7,330 for acquiring the rights of tenancy at a total of $22,000. On the death of the said Lee Yuen Heong's husband she succeeded to the partnership and the rent receipts were in her name and Chop Hup Hing as statutory tenants. When the third partner retired from the partnership he was paid back the sum of $7,330. Since then Chew Khan and Lee Yuen Heong remained partners and continued to live in the premises for many years, she with her children and Chew Khan with his wife. In August, 1961, Lee Yuen Heong left the premises and surrendered her right of tenancy to Chew Khan, who now maintains that he is the lawful surviving tenant of the premises and that he has been paying the monthly rent of $76 to the landlord through his collector. But since the Assistant Official Assignee took over the rents were paid to the landlord through this officer. He now says that his wife undertakes to pay the future monthly rent on the premises on his behalf although he is believed to be seeking a new livelihood.

Mr. Seenivasagam said that the bankrupt is still living on the premises on a month to month tenancy and using it as his residence and submits that in such circumstances the tenancy is not a burden to the estate. On the other hand, if the court gives the order asked for the effect of that order will be to enable the landlord to get possession.

In the course of his address to me he asked me to correct Chew Khan's paragraph 4 of his affidavit by substituting the words "as the lawful tenant" for the words "statutory tenant."

It is now agreed that the tenancy held by the partnership was a contractual one. As I have said before, in this case the Assistant Official Assignee has ceased to have any interest in the premises and that if he continues to be in possession he will be liable for the payment of rent and to see that the bankrupt would keep to the terms of the tenancy. In my view, it is not to the interests of the creditors that the Assistant Official Assignee should continue to undertake to bear that burden. It is clearly the intention of the Ordinance that the Assistant Official Assignee

should not be compelled to acquire the bankrupt's property subject to such liabilities and it has been said that "when the Official Assignee finds that the property will not produce a surplus beyond the value of the liability affecting it he may be able to disclaim it and so get rid of the property and the liability together." — See the judgment of Jessel M.R. in *Ex parte Walton* (1).

I am not concerned really at this stage as to what is the effect of a disclaimer in such a case as this, but there apparently is no doubt that it would result in depriving the tenant of any further interest in the premises. I can only say what Scrutton L.J. has said:—

"It seems to me that the persons responsible for drafting of this last statute have shown a great lack of consideration of the results of various events which may be expected to happen in some cases of tenancy. I am amazed that it never appears to have struck them to consider what was to occur in the case of bankruptcy." (*Reeves* v. *Davies* (2)).

I feel the same sympathy for the tenant in this case, but I am afraid I have no alternative but to grant the leave prayed for by the Assistant Official Assignee.

Order accordingly.

Solicitors: *Das & Co.; S. Seenivasagam & Sons.*

LIM BABA v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) February 1, 1962]

[Malacca — Criminal Appeal No. 12 of 1961]

Criminal Law and Procedure — Penal Code, ss.34, 366 — Abduction of woman with intent to have illicit sexual intercourse.

Evidence Ordinance, 1950, ss.146, 148 to 152, 157 — Evidence of complainant — Corroboration of by complainant — Whether cross-examination as to credit of complainant relevant.

The appellant was charged and convicted by the President of the Sessions Court under section 366 of the Penal Code for abducting a woman of 19 years with intent to have illicit sexual intercourse with her and sentenced to one and half years' imprisonment and a fine of $200. In this appeal it was contended for the appellant: (1) the charge was defective because no reference was made to section 34 of the Penal Code; (2) the learned President had erred in placing on the appellant the onus of proving that no offence had been committed; (3) the President misdirected himself in accepting as corroboration the complaint of the complainant and (4) the learned President was wrong in disallowing any questions by the appellant's counsel as to her character.

Held: (1) the charge was correctly framed because there was evidence that both the appellant and his companion had removed the complainant in a car and that shortly afterwards they both had sexual intercourse with her;

(2) it was clear that throughout the trial the President had fully appreciated that the onus was always on the prosecution;

(3) there was no misdirection because a complaint if made immediately would be treated as corroboration in view of section 157 of the Evidence Ordinance, 1950 although in England it would not be so regarded;

(4) in this case where the case for the prosecution rested almost entirely on the corroborated evidence of the complainant, a cross-examination addressed to the credit of the complainant would have been especially relevant.

Cases referred to:—

(1) *Rex* v. *Job Whitehead* [1929] 1 K.B. 102.

(2) *Rex* v. *Velayuthan* [1935] M.L.J. 277.

(3) *Rex* v. *Koh Soon Poh* [1935] M.L.J. 120.

(4) *Mahomed Mian* v. *Emperor* A.I.R. 1919 Pat. 515, 516.

(5) *Bombay Cotton Manufacturing Co.* v. *Motilal Shivlal* I.L.R. (1915) 39 Bom. P.C. 386.

CRIMINAL APPEAL.

S. M. Yong for the appellant.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: The appellant was charged as follows:—

"That you on 5.2.61 at about 2.30 a.m. at the Coronation Park, Malacca in the State of Malacca, together with another person not in custody, abducted a woman, to wit one Lim Sor Kim (f), aged 19 years, with intent that she may be forced into illicit intercourse and that you thereby committed an offence punishable under section 366 of the Penal Code."

According to the prosecution, at about 2 a.m. on 5th February, 1961, the complainant P.W.3 and five other friends left for the Coronation Park, Malacca, after a dance at the Seaview Hotel. There they split up into couples, the complainant going with P.W.8 to the Pavilion, one couple, P.W.4 and P.W.10, remaining in a car some distance away and the remaining couple, P.W.9 and P.W.11, somewhere near this car. While P.W.3 and P.W.8 were seated talking at the Pavilion two men appeared and attacked P.W.8 with a bottle. The appellant was one of the two men. The appellant and his companion then drove away in a car with the complainant to the Jelutong Chinese Cemetery where the complainant was sexually assaulted by both the appellant and his companion. After the assault the complainant was taken away in the car and left at a spot in the vicinity of the Portuguese Settlement near P.W.8's house. Immediately on her release the complainant related to P.W.4 and P.W.10 her distressing experience at the hands of the appellant and his companion. P.W.4, a police inspector, took the complainant in his car to the police station. On the way they came across the appellant's car SR 5270 when the complainant pointed out the appellant and his companion to P.W.4. After dropping the complainant near the Convent P.W.4 started after the appellant's car. Somewhere near Templer Avenue the appellant's companion got out. The appellant then drove on through a police check point to Bukit Kajang Estate where he abandoned his car and escaped.

In his defence the appellant denied the charge. He said that he was driving home at about 11 p.m. on the day in question when he met a person whom he did not know very well and who compelled him to go to the Coronation Park where he saw a man and the complainant "doing the sexual act". His companion then assaulted the man and then compelled him (the appellant) to take him and the complainant